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IN THE

Supreme Court of the United States

October Term, 1957

No. 976

JOHN A. SEALY, JR. ET AL.,

Petitioners

vs.

DEPARTMENT OF PUBLIC INSTRUCTION OF PENNSYLVANIA ET AL.,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania is reported in 159 F. Supp. 561 (1957). The opinion of the United States Court of Appeals for the Third Circuit is not yet reported.

JURISDICTION

Petitioner invokes the jurisdiction of this Honorable Court under §1254 of the Judicial Code, 62 Stat. 928 (1948), 28 U.S.C. §1254 (1952). The decision of the Court of Appeals was entered on February 5, 1958. The time within which the petition for writ of certiorari might be filed expires on May 6, 1958.

STATUTE INVOLVED

Petitioner alleges that defendants have denied him his rights under the Third Civil Rights Act of April 20, 1871, 17 Stat. 13, now Rev. Stat. §1979, 42 U.S.C. §1983.

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

QUESTION PRESENTED FOR REVIEW

Does the selection by the duly constituted local authorities of a site in the upper end or tract of the township for a new junior high school to serve the entire township in a township consisting of two non-contiguous tracts in which the population of the upper tract is 5% Negro and 95% White and the population of the lower tract is 89.3% Negro, when there is no evidence of intent by the members of the school board making this determination to discriminate, violate the rights of Negro children and their parents residing in the lower tract?

REASONS FOR DENYING THE WRIT

No claim is made in the petition before this Court that the constitutionality of any Pennsylvania statute is drawn into question. Indeed, the Pennsylvania School Code of March 10, 1949, P. L. 30, Art. XIII, Sec. 1310, prohibits segregation or discrimination.

The selection of the site for a new integrated junior high school is not in its effect upon the composition of the school population racially discriminatory. Under the peculiar circumstances of the case at bar, namely, the division of the township into two non-contiguous tracts, it is apparent that the selection of a location in either tract will work some inconvenience upon the residents of the other tract. The preexisting racial pattern of the two tracts causes the resulting inevitable inconvenience to rest more heavily upon either the predominantly White or the predominantly Negro group. The population of the upper section is 95% White. The population of the lower section is 89.3% Negro. No solution is possible which could avoid such a result. Consequently, the selection of this school site does not violate the rights of any residents of the township. The requirements set forth by this Court in *Brown v. Board of Education*, 394 U. S. 294, have been fully met.

The selection of a school site involves many factors. The exercise of this judgment upon the part of the school board does not raise a question of the violation of federal rights in the absence of some showing of

an intent upon the part of the school board to discriminate. The record clearly shows that the selection of the site by all Negro members of the Board was not motivated by an intent to discriminate against any racial group.

CONCLUSION

It is clear that petitioner has failed to state a cause of action under the Civil Rights Act. No substantial question of public importance is involved. It is, therefore, urged that the petition for the writ of certiorari be denied.

Respectfully submitted,

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